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In the Supreme Court of the United States

OCTOBER TERM, 1945

PEOPLE OF THE STATE OF ILLINOIS, EX REL. ROBERT L. GORDON, DIRECTOR OF LABOR, PETITIONER

v.

NIGEL D. CAMPBELL, COLLECTOR OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

BRIEF FOR THE RESPONDENT IN OPPOSITION

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v.

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OPINIONS BELOW

The Circuit Court of Cook County, Illinois, rendered no opinion. The opinion of the Supreme Court of Illinois (R. 42–55) is reported in 391 Ill. 29.

JURISDICTION

The amended judgment of the Supreme Court of Illinois was rendered on September 17, 1945. (R. 42, 56). The time for filing a petition for a writ of certiorari was extended by this Court until January 16, 1946. (R. 57). The petition for

writ of certiorari was filed January 15, 1946. The jurisdiction of this Court is invoked under Section 237 (b) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the claim of the United States against the Chicago Waste and Textile Company for unpaid federal unemployment compensation taxes and federal insurance contribution taxes is entitled to priority by virtue of Section 3466, Revised Statutes, over the claims of petitioner against the company for unpaid unemployment compensation contributions levied by Illinois statute.

STATUTES INVOLVED

Revised Statutes:

> SEC. 3466. Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority hereby established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as

to cases in which an act of bankruptcy is committed.
(31 U. S. C. 191.)

Revenue Act of 1943, c. 63, 58 Stat. 21:

SEC. 602. CREDIT AGAINST FEDERAL UNEMPLOYMENT TAXES FOR YEARS 1936 TO 1942.

* * * * *

(b) *Allowance of Credit Against Tax for 1939, 1940, 1941, and 1942 Where Assets in Control of Court.*—Against the tax imposed by the Federal Unemployment Tax Act for the calendar year 1939, 1940, 1941, or 1942, any taxpayer shall be allowed credit for the amount of contributions paid by him into an unemployment fund under a State law, without regard to the date of payment, if the assets of the taxpayer were, at any time during the period from the last day upon which the taxpayer was required under section 1604 of the Federal Unemployment Tax Act to file a return of the tax against which credit is claimed to June 30 next following such last day, inclusive * * * in the custody or control of a receiver, trustee, or other fiduciary appointed by, or under the control of, a court of competent jurisdiction. * * *

Illinois Unemployment Compensation Act (Jones Illinois Statutes Annotated (1944), Sec. 45.154):

SEC. 26. (a) Lien created upon assets of employer-Commencement-Limitations.) A lien is hereby created in favor of the Di-

rector upon all the personal property or rights thereto owned or thereafter acquired by any employer and used by him in connection with his trade, occupation, profession or business, from whom contributions, interest or penalties are or may hereafter become due. Such lien shall be for a sum equal to the amount at any time due from such employer to the Director on account of contributions, interest and penalties thereon. Such lien shall attach to such property at the time such contributions, interest or penalties became, or shall hereafter become, due. * * *

STATEMENT

On June 29, 1942, the Director of Labor of the State of Illinois filed suit in the Circuit Court of Cook County to foreclose a statutory lien against the Chicago Waste and Textile Company for Illinois unemployment compensation taxes due. (R. 1–12). The taxes due amounted to $788.45 and notice of lien granted by Section 26 (a) of the Illinois Unemployment Compensation Act had previously been filed with the Recorder of Deeds of Cook County, Illinois. (R. 10–12). The complaint alleged that the property of the debtor was about to be sold at public auction in execution of a judgment held by Associated Agencies, Inc., against the debtor and requested an injunction restraining such sale. (R. 7–8). The complaint, alleging the debtor to be insolvent, also requested the appointment of a receiver to liquidate the as-

sets of the company. (R. 7, 9). As prayed, a receiver was appointed and an injunction granted. (R. 13).

Thereafter, Carter H. Harrison, Collector of Internal Revenue, filed claims in the proceeding for federal unemployment compensation taxes, amounting to $1,431.16, plus interest, and for federal insurance contribution taxes amounting to $522.91, plus interest due from the Chicago Waste and Textile Company. (R. 14–18.) Subsequently, the Collector filed an intervening petition alleging the insolvency of the Chicago Waste and Textile Company and claiming priority of payment for his claims by virtue of Section 3466, Revised Statutes. (R. 18–19.) The answer of the Director of Labor admitted the insolvency but asserted that his own claim was entitled to priority under his lien. (R. 19–21.)

A net balance of $677.81 was realized from the liquidation of the property of the company by the receiver. This sum was ordered deposited with the Clerk of the Circuit Court, subject to further orders of the court. (R. 21–22.)

Following a hearing, the Circuit Court of Cook County, Illinois, ordered that 90 percent of the funds on deposit be turned over to the state and the remaining ten percent to the Collector. (R. 22.)

The Collector appealed and the Supreme Court of Illinois held that under Section 3466, Revised Statutes, he was entitled to receive 100 percent

priority on the claim for federal insurance contributions and any balance remaining was to be paid to the Director of Labor and credited against the claim of the United States for federal unemployment taxes. (R. 42–45.) The court recognized the applicability of Section 3466, Revised Statutes, to the federal taxes but distinguished between the claim for federal insurance contribution taxes and the claim for federal unemployment compensation taxes on the ground that under Section 602 (b) of the Revenue Act of 1943, the receiver of the debtor was authorized to pay the latter taxes to the state and to credit against taxes due the Federal Government for the amounts paid to the state up to 90 percent of the taxes due the Federal Government. (R. 44–45, 55.) A petition for rehearing was denied on September 17, 1945. (R. 41.)

ARGUMENT

The decision below is in accord with established principles that have so recently been announced by this Court as not to warrant further consideration at this time of the issues involved. *United States* v. *New York*, 315 U. S. 510.

The court below was clearly right in upholding the principle of federal priority under Section 3466 of federal insurance contribution tax claims over state unemployment compensation tax claims, and in holding that federal unemployment compensation taxes are likewise entitled to priority. Sec-

tion 3466, Revised Statutes, *supra*, provides that whenever any person indebted to the United States is insolvent, the debts due to the United States shall first be satisfied. Under this provision, federal taxes due and accrued at the time of institution of the receivership proceedings have been held debts, and uniformly have received priority over competing state and local tax claims. *United States* v. *Texas*, 314 U. S. 480; *Price* v. *United States*, 269 U. S. 492; *Stripe* v. *United States*, 269 U. S. 503; *Spokane County* v. *United States*, 279 U. S. 80; *New York* v. *Maclay*, 288 U. S. 290. Federal insurance contribution taxes and unemployment compensation taxes are valid excise taxes. *Steward Machine Co.* v. *Davis*, 301 U. S. 548; *United States* v. *New York*, *supra*. And this Court has upheld under Section 3466 the priority of federal unemployment compensation tax claims over a landlord's rent lien under Virginia law and a claim for municipal taxes. *United States* v. *Waddill Co.*, 323 U. S. 353.

Social security taxes levied under the federal statute create claims which are separate and distinct from unemployment compensation claims arising under state acts, and are nonetheless so because a common social objective underlies both state and federal acts. Cf. *United States* v. *New York*, *supra*. That the federal act permits nondelinquent taxpayers to take credits against the federal unemployment compensation taxes due (up to 90 percent thereof) equal to the amounts

paid into an approved state unemployment compensation fund, encourages taxpayers promptly to satisfy their state tax obligations, but does not alter the nature of the tax as a federal obligation. The full amount of the taxes levied are debts due the United States and fall within the scope of Section 3466. *Matter of White Plains Oil Corp.*, 287 N. Y. 141. State unemployment compensation claims do not acquire the status of federal claims merely because the state and federal governments collect the taxes as part of the same broad program. Section 3466 had long been on the books when the federal social security legislation was enacted. Had Congress intended, in the case of competing state and federal social security tax claims, to waive the priority historically enjoyed by all other federal tax claims, such intention would not have been left to inference and conjecture.

The court below correctly disposed of the remaining issues raised in the petition. The court rejected petitioner's argument that he held a specific and perfected lien and found instead that under Section 26 (a) of the Illinois Unemployment Compensation Act he held only a general inchoate lien. This finding was entirely in accord with the principle laid down in *United States* v. *Waddill Co., supra,* upon which case the court specifically relied. The court also rejected petitioner's contention (Br. 25–28) that the Chicago Waste and Textile Company was not insolvent

within the meaning of Section 3466, Revised Statutes. This contention finds adequate refutation in the pleadings: (a) The original complaint filed by the state sought the appointment of a receiver on the ground that the company was believed insolvent, and this allegation of insolvency was never denied; (b) the original complaint requested an injunction restraining a judgment creditor (and the bailiff into whose hands the judgment had been placed for execution) from selling the property of the company at public auction to satisfy the judgment, it being alleged, without denial, that such sale was scheduled for the same day the complaint was filed; (c) the intervening petition filed by the Collector of Internal Revenue alleged, and the State's answer thereto admitted the insolvency of the taxpayer company. In view of these facts we think it clear that the Chicago Waste and Textile Company was insolvent within the meaning of Section 3466. *Spokane County* v. *United States, supra; cf. Price* v. *United States,* 269 U. S. 492, 502.

Such conflict as there is involves certain aspects of *Rivard* v. *Bijou Furniture Co.,* 67 R. I. 251, modified, 68 R. I. 358, which is clearly erroneous under rulings of this Court; this conflict does not call for review by this Court.[1] Cf. Rule 38 (5) (a).

[1] The files of the Department of Justice show that, although the *Rivard* decision was regarded as erroneous, the Government did not ask for certiorari because of the negligible amount involved.

Moreover, the *Rivard* case is not in conflict with the ruling below on any issue adversely affecting the State of Illinois except insofar as the court below held that the Federal Government was entitled to priority in respect of federal insurance contributions tax levied under subchapter A of Chapter 9 of the Internal Revenue Code. Unlike the instant case, the *Rivard* case did not involve any federal unemployment insurance tax claims under subchapter C of Chapter 9 of the Internal Revenue Code, and any comment of the court with respect to such taxes must be regarded as mere dictum. Moreover, no contention was there made that the state held a specific and perfected lien which barred federal priority under Section 3466, and the insolvency of the taxpayer was not questioned. Further, in this case the State's claim was given priority in fact over the federal claim for unemployment compensation taxes, since the court below ordered that after the payment of federal insurance contribution taxes with lawful interest thereon to the Federal Government, the remaining available funds were to be paid to the state and credited against the federal unemployment compensation tax claim.[2]

[2] Significantly, if the principle of the *Rivard* case were extended to include federal unemployment insurance tax claims, the State in this case would not have received the entire amount available in the fund, as here, but state and federal claims would have shared on the basis of equal priority.

While we think the court below erred in failing to order payment to the Federal Government of the federal unem-

With respect to federal insurance contribution taxes, there is admittedly a conflict between this case and the *Rivard* case, for there the court decided that the federal claim for federal insurance contribution taxes was not entitled to priority under Section 3466 over the claim of the state for unemployment compensation taxes, but that both claims had co-equal status. We believe, however, that the *Rivard* case cannot be reconciled with the holding of this Court in *United States* v. *New York,* 315 U. S. 510. While the *New York* case did not involve Section 3466, it does establish that claims for federal insurance contribution taxes are separate and distinct from claims for contribu-

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ployment compensation taxes as well as federal insurance contribution taxes, no petition for certiorari has been filed for the reason that the fund will be practically exhausted by the payment to the Federal Government of federal insurance contribution taxes.

Section 602 (b) of the Revenue Act of 1943, *supra,* does not warrant, as the court below assumed, payment to the state coupled with a credit on the federal unemployment compensation tax claim. *Matter of White Plains Oil Corp.,* 287 N. Y. 141. Section 602 (b) merely provides an extension of time during which receivers may claim the 90 percent credit for payments made to approved state bodies. The amount of the federal claim for unemployment compensation taxes is not affected by this provision and application of the priority would have required the court to order that all the available funds be paid to the Collector. In any case, since no credit was possible for ten percent of the federal claim, that amount certainly should have been paid to the Collector before any funds were paid to the state. Payment of this ten percent would have exhausted the fund, and question of the proper disposition of the remaining 90 percent would then have been moot.

tions arising under state unemployment compensation statutes. The *Rivard* case glossed over this duality on the broad ground that the social security program is a joint federal-state venture with a common social objective. The original decision in the *Rivard* case was rendered before the decision in the *New York* case was announced, and although the *New York* case was brought to the court's attention on reargument, the court adhered to the views expressed in the first opinion. We think any conflict between the *Rivard* case and the present case is unimportant because of this Court's decision in the *New York* case.

CONCLUSION

The interpretation of Section 3466 by the court below is correct and in view of this Court's decision in *United States* v. *New York, supra,* the conflict between this case and *Rivard* v. *Bijou Furniture Co., supra,* does not call for any review by this Court. The petition should therefore be denied.

Respectfully submitted.

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